



DEPARTMENT OF THE NAVY
SPACE AND NAVAL WARFARE SYSTEMS COMMAND
4301 PACIFIC HIGHWAY
SAN DIEGO, CA 92110-3127

SPAWARINST 7030.1
SPAWAR 07
19 March 1998

SPAWAR INSTRUCTION 7030.1

From: Commander, Space and Naval warfare Systems Command

Subj: ACCEPTANCE OF FUNDS FOR NON-DOD WORK

Ref: (a) ASN (RD&A) memo of 11 Aug 97
(b) ASN (RD&A) memo of 15 Dec 95
(c) NAVCOMPT Manual, Volume 5
(d) DoDINST 7000.14R

Encl: (1) List of Statutes authorizing work for non-DOD customers

1. Purpose. To provide current instructions and guidance as provided in references (a) and (b) under which Space and Naval Warfare Systems Command (SPAWAR) and its Systems Centers may perform work or provide supplies, services or facilities to other DOD/non-DOD departments.
2. Scope and Applicability. Provisions of this instruction are applicable to all SPAWAR Systems Center and is intended to apply basically to the legal aspects of the provision of work for non-Navy organizations, and not to the technical requirement of such work.
3. Policy. The Space and Naval Warfare Systems Command will perform work or services for private parties when (1) it is determined to be in the best interests of the navy to do so; and (2) it is determined that performance of the work will not place the Government in competition with private industry.
4. Specific Criteria. Requests for approval must cite the appropriate statutory authority such as:
 - Economy Act 31 U.S.C. 1535
 - 10 U.S.C. Section 2539b (authority for private party use of Government testing facilities for testing of materials and equipment)
 - 10 U.S.C. Section 2553 became effective 1 April 1995 (governs sales to private parties by DOD working capital industrial facilities).
 - Other applicable laws are cited in enclosure (1).

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5. Funding.

a. SPAWAR Systems Centers may accept funds for non-DOD work under the following conditions:

(1) Requested work is within mission, capability and capacity.

(2) Acceptance of the work will not adversely impact:

- scheduled DOD work
- financial management guidelines such as plan-end carryover

(3) Commercial or private sector capability to perform the work is not readily available.

b. Charges for work performed at modified and non-industrial funding activities shall be according to reference (c) and according to reference (d) when performed at industrial fund activities. These references can be accessed on the web at <http://www.dtic.mil/comptroller/fmr/>.

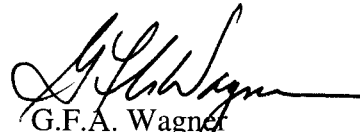
6. Approval Authority. Authority to review and/or approve all work requests is delegated to SPAWAR 07, Director of Operations. The following applies:

a. Less than \$100K – must be reviewed and approved by SPAWAR 07.

b. Exceeding \$100K – must be reviewed by SPAWAR 07 who will forward a recommendation to COMSPAWARSYSCOM for approval/disapproval.

7. Information Copies. An information copy of all requests to do work for an entity outside the Federal Government shall be sent to the Office of Counsel, SPAWAR 00C.

8. Action. Addressees shall comply with policy and guidance in this instruction.


G.F.A. Wagner
Rear Admiral, U. S. Navy

Distribution:

SPAWAR List 4

SNDL Part II

FKQ (SPAWARSYSCENS)

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LIST OF OTHER STATUTORY AUTHORITY

Ref: (a) USD (A&T) memo of 17 Jan 95

1. Unique Army Authority. 10 U.S.C. 2553 excludes sales by an Army industrial facility that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by their own specific authority at U.S.C. 4543. This Army authority is more restrictive than Sec. 2553 in certain respects; for example, it is limited to sales for enumerated purposes: specifically, for use in developing new products; for incorporation into items to be sold to, or to be used in a contract with a U.S. agency or friendly foreign government; or for use in commercial products. Another restriction of Sec. 4543 and not of Sec. 2553 is that the article must be sold to a U.S. entity or the services performed in the U.S.

By Sec. 141 of the FY 95 DOD Authorization Art., Sec. 4543 was revised to incorporate certain requirements also found in Sec. 2553 – specifically, the sales must meet the following conditions: nonavailability of the article or service from a commercial source located in the U.S.; a hold harmless and indemnity agreement from the purchaser; the article or service can be substantially performed by the industrial facility with only incidental subcontracting; it is in the public interest to manufacture such article or perform the service; and the sale will not interfere with performance of the military mission of the industrial facility.

2. 10 U.S.C. 2208 (h) and 2208 (j). Sec. 2208 (i) provides that, regardless of DoD regulations implementing this statute, “supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.” Sec. 2208 (j) permits the Secretary of a military department to authorize a working capital funded industrial activity to sell items it has manufactured or manufactured, or sell associated manufacturing or remanufacturing services, to persons outside DoD, provided the purchaser is fulfilling a DoD contract which was solicited on a public/private competition basis.

3. 10 U.S.C. 2319, Qualification testing. Authorizes an agency to provide qualification testing or other quality assurance demonstration testing of a potential offeror’s product, on a reimbursable basis, to qualify the product under the requirements of a particular contract (e.g., qualified products list, qualified manufacturers list, or qualified bidders list).

4. 10 U.S.C. 2358, Research and development projects. Authorizes SECDEF or Secretaries of the military departments to enter into projects for basic research, applied research, advanced research, and development, provided they are necessary to that department’s R&D responsibilities and either relate to weapon systems and other military needs, or are of potential interest to DoD. Such projects can be performed under a contract, cooperative agreement, or grant.

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5. 10 U.S.C 2371, Research projects; other transactions. Authorizes SECDEF and the Secretaries of the military departments to enter into basic, applied, and advance research projects by use of a transaction other than a contract, cooperative agreement or grant.
6. 10 U.S.C. 2471, Lease and excess depot-level equipment and facilities. Authorizes military departments to lease to persons outside the DoD excess equipment and facilities of a depot-level activity, provided the lease will not have a significant adverse effect on military readiness; the lessee reimburses DoD for its lease costs; the lessee provides a hold harmless and indemnity agreement.
7. 10 U.S.C. 2483, Sale of electricity from alternate energy and cogeneration production facilities. Authorizes the military departments to sell electrical energy generated from alternate energy or cogeneration type production facilities to a public or private utility company.
8. 10 U.S.C. 2511, Defense dual-use critical technology partnerships. Authorizes SECDEF to establish cooperative arrangements or partnerships between DoD and non-DoD entities to encourage/provide for research, development, and application of dual-use critical technologies. To establish partnerships, SECDEF may use grants, contracts, or enter into cooperative agreement and other transactions pursuant to 10 U.S.C. 2371.
9. 10 U.S.C. 2512, Commercial military integration partnerships. Authorizes SECDEF to establish cooperative arrangements or partnerships between DoD and non-DoD entities to further the national security objectives set forth in 10 U.S.C. 2501 (a).
10. 10 U.S.C. 2514, Technology transfer. Authorizes SECDEF to establish the Federal Defense Laboratory Diversification Program to encourage greater cooperation in research and production activities carried out by DoD labs and by private industry. DoD labs under the program shall promote, by the use of patents, licensed, CRADA, other cooperative agreements, etc., to transfer defense or dual-use technologies to the private sector.
11. 10 U.S.C. 2539b, Availability of samples, drawings, information, equipment, materials, and certain services. Provides authority of SECDEF and service secretaries to a) sell, rent, lend, or give samples, drawings, and manufacturing or other information to any person or entity; and to sell, rent, or lend Government equipment or materials to any person or entity for use exclusively in independent research and development programs or for use in demonstrations to foreign governments; b) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facilities for the testing of materials, equipment, models, computer software, and other items.¹ By reference (a), USD (A&T) expressly authorizes military departments to use this authority now, despite the fact that DoD implementing regulations have not yet been finalized.²

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12. 10 U.S.C. 2665, Sale of certain forestry products. Provides authority to sell any person or foreign government any forest products produced on land owned or leased by a military department.

13. 10 U.S.C. 2681, Commercial use of test and evaluation installations. Provides authority, until 30 Sept 1998, for SECDEF to enter into contracts with commercial entities for their use of DoD Major Range and Test Facility to conduct commercial test and evaluation activities. Such use must be on a reimbursable basis (reimbursement of DoD direct costs mandatory, and DoD has discretion to require reimbursement of indirect costs also).

14. 10 U.S.C. Supplies and services to foreign naval vessels and aircraft. Authorizes a U.S. naval vessel or activity to furnish certain supplies and logistics support, on a reimbursable basis, to a foreign naval vessel or aircraft if similar supplies and services are furnished on a like basis to U.S. naval vessels and aircraft by the foreign country concerned.

¹This statute is a consolidation and expansion of the following precursor statutes applicable to the Army and Air force: 10 U.S.C. 4507 and 9507 (Air Force); 10 U.S.C. 4506 and 9506 (Army); and 10 U.S.C. 4508. The new statute, among other things, expands the authority to all military services, broadens authorized recipients from likely DoD suppliers to "any person or entity," eliminates the requirement to be related to an "approved production plan;" permits use of the authority for demonstrations to foreign governments; and expressly sanctions use of the authority for IR&D purposes. This statute adopts the recommendations of the Section 800 Panel to broaden this authority and provide it to all the military departments. See Chapter 3, page 3-121 of the Report of the Acquisition Law Advisory Panel of January 1993.

²Although this statute covers the Senator Boxer example of use of the McClellan NRC for testing of commercial airline parts, this authority was unavailable until the reference (a) memorandum was issued because the statute required SECDEF to issue implementing regulations.

15. 10 U.S.C. 7228, Supplies to merchant vessels. SECNAV may issue regulations authorizing sales to merchant ships of fuel and other supplies when such supplies cannot be purchased from other sources at the vessel's current location and the vessel cannot proceed to the nearest port without endangering the safety of the ship or its personnel.

16. 10 U.S.C. 7303, Model basin. Authorizes SECNAV to allow experiments at the Carderock Model Basin for private persons on a reimbursable basis.

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17. 10 U.S.C. 7361-7363, Naval salvage facilities. Authorizes SECNAV to provide salvage facilities to private vessels; to transfer naval vessels or associated equipment to private salvage companies; and sell, charter, lease or otherwise transfer to a private party navy salvage vessels or gear.
18. 10 U.S.C. 7430, Sale of petroleum reserves. Authorizes SECNAV to sell petroleum produced from the naval petroleum reserves.
19. 15 U.S.C. 3710, Cooperative research and development agreements. Authorizes each Federal agency to permit its Federal labs to enter into cooperative research and development agreements (CRADA) with other Federal agencies, state or local government entities, public and private foundations, and nonprofit organizations. Under CRADA, the Federal lab and other participants each provide personnel, services, facilities, equipment, intellectual property, or other resources to conduct the specified R&D efforts which are consistent with the missions of the lab.
20. 22 U.S.C. 2761, et seq., Foreign military sales. Authorizes the sale of defense articles and services from DoD stocks to any eligible foreign country or international organization.
21. 22 U.S.C. 2770, Sale of defense articles and services to a U.S. company for incorporation into end items to be sold to a foreign entity. Authorizes sales of defense articles and services to any U.S. company for incorporation into end items (and for concurrent or follow-on support) to be sold by such company on a direct commercial basis to a friendly foreign country or international organization. Defense services may be performed only in the U.S. This authority applies only if the end item involved is to be procured for the armed forces of the foreign entity, the articles would be supplied to the prime contractor as GFM or GFE if the end item were being procured for the use of the U.S. military, and the articles or services are available only from the U.S. Government.
22. 31 U.S.C. 1535, Economy Act. Authorizes an agency or major organizational unit within an agency to provide goods or services to another agency or other major organizational unit within the same agency if the ordering agency determines, among other things, that the providing agency is able to provide or contract for the ordered goods or services and the good or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.
23. 49 U.S.C. 1507, Public use of Government air navigation facilities. Authorizes agency head to prescribe regulations allowing use of Government air navigation facilities for public use; authorizes sale to a private aircraft of fuel, oil, equipment, supplies, and provision of mechanical service, shelter, and other assistance required due to an emergency necessary to allow the aircraft to continue to the nearest private airport.